

FINAL APPROVED

VIRGINIA BOARD OF MEDICINE FORMAL HEARING MINUTES

Friday, October 7, 2011

Department of Health Professions Henrico, Virginia
Perimeter Center
9960 Mayland Drive, Suite #300

CALL TO ORDER: A panel of the Board was called to order at 9:37 a.m.

MEMBERS PRESENT: Stephen Heretick, J.D., Chair
Deeni Bassam, M.D.
Valerie Hoffman, D.C.
Jane Piness, M.D.
Robert E. Hickman, M.D.
Michael Signer, Ph.D., J.D.

BOARD COUNSEL: Amy Marschean, Senior Assistant Attorney General

STAFF PRESENT: William L. Harp, M.D., Executive Director of the Board
Renée S. Dixon, Discipline Case Manager

COURT REPORTER: Andrea Pegram, Court Reporting Services

**PARTIES ON BEHALF OF
COMMONWEALTH:** James Schliessmann, Assistant Attorney General
Julia Bennett, Adjudication Specialist

**WITNESSES FOR THE
COMMONWEALTH:** Lisa Elgin, Sr. Investigator, DHP
Faye P. Sedwick, R.N., Medical Staff Services Coordinator
Alan J. Fink, M.D.

RESPONDENT WITNESSES: Garth Stevens, Jr., M.D.
Karen Voorhees, R.N.
Pastor John W. Tinsley

MATTER SCHEDULED: Pierre Kamguia, M.D. License No.: 0101-243591
Case No.: 129695

PRELIMINARY MATTERS: (1) Dr. Kamguia advised the Chair that he had a DVD, which contains a video that is relevant to the allegations against him. A link to this video was subject to prior ruling whereby it was denied as his exhibit.

Mr. Schliessmann, on behalf of the Commonwealth, stated that Dr. Kamguia had referenced to URL links in his respondent exhibit. Mr. Schliessmann advised that he was only able to open one (1) of the links, which he objected to since it was not relevant to the pending matters before the Board.

RULING:

The Chair reserved ruling on whether the DVD would be allowed into evidence. Further, he instructed Dr. Kamguia to show the DVD to Mr. Schliessmann during a break and he would then rule on the DVD at the time Dr. Kamguia motioned to move it into evidence.

(2) Dr. Kamguia advised the Chair that he had requested a Subpoena Duces Tecum for a witness that currently resides in Alabama be issued. The Subpoena Duces Tecum was issued to the former Memorial Hospital CEO Joseph Roach, who had chosen not to respond or appear before the Board. Dr. Kamguia argued that the Commonwealth pursuant to Va. Code Section 2.2-4020 should be required to enforce the subpoena.

Mr. Schliessmann, on behalf of the Commonwealth, argued that neither the Commonwealth or the Board has the ability to enforce an out of state Subpoena Duces Tecum for a witness. Further, Dr. Kamguia has the burden of coordinating his witnesses appearances and communication with them. Mr. Schliessmann advised that in preparing for its case, the Commonwealth had contacted three (3) witnesses that had been subpoenaed by the Commonwealth and Dr. Kamguia. All of the witnesses had advised that they have not had any communication or contact with Dr. Kamguia.

RULING:

The Chair ruled that since the Commonwealth or the Board has no authority to enforce an out of state Subpoena Duces Tecum, the objection by Dr. Kamguia was denied.

(3) Dr. Kamguia advised that one (1) of his Subpoena Duces Tecum requesting certain records from Memorial Hospital was subject to a Motion to Quash filed by the Hospital. Dr. Kamguia advised that his objections to quashing the Subpoena Duces Tecum was denied. Further, his request for reconsideration was denied. Dr. Kamguia stated that the information being subpoenaed from the hospital was relevant to the issues pending before the Board regarding his standard of care.

Mr. Schliessmann, on behalf of the Commonwealth, stated that the hospital had provided some of the records Dr. Kamguia subpoenaed. However, the other records were not relevant to the allegations, and were subject to peer review.

RULING:

The Chair ruled that the records that were the subject of the hospital's Motion to Quash were not relevant and had no probative value to the issues before the Board. Therefore, Dr. Kamguia's motion was denied.

(4) Dr. Kamguia objected that the Commonwealth had contacted and interviewed several of his witnesses without notifying him prior to the witnesses being contacted or allowing him to be present. Dr. Kamguia stated that he considered this contact as "witness tampering" and felt that it was inappropriate.

Mr. Schliessmann, on behalf of the Commonwealth acknowledged that he had contacted witnesses that had been subpoenaed by the Commonwealth and Dr. Kamguia. Mr. Schliessmann stated that as the party representing the Commonwealth in this matter, it was his professional duty and obligation to contact witnesses for preparation of the Commonwealth's case.

RULING:

The Chair ruled that there was no evidence of witness tampering and Mr. Schliessmann did have a professional duty, therefore, Dr. Kamguia's objection was denied.

(5) Mr. Schliessmann objected to a portion of an additional exhibit submitted by Dr. Kamguia that he wanted admitted into evidence. Mr. Schliessmann objected to a newspaper article on the basis of no relevancy.

Dr. Kamguia argued that the article was relevant since it involved the facility from which the allegations arose.

RULING:

The Chair sustained the Commonwealth's objection. The exhibit was admitted into evidence with the newspaper article redacted and marked as Respondent Exhibit B.

DISCUSSION:

Dr. Kamguia appeared before the Board in person in accordance with a Notice of the Board dated August 19, 2011. Dr. Kamguia was not represented by counsel.

The Board received evidence and sworn testimony from witnesses called by the parties and Dr. Kamguia regarding the

matters as set forth in the Statement of Particulars dated August 19, 2011.

MOTIONS & RULINGS:

During the course of witness testimony, objections were noted by Mr. Schliessmann and Dr. Kamguia, which were ruled on by the Chair.

Both Dr. Fink and Dr. Stevens were qualified as experts in the practice of ophthalmology.

Mr. Schliessmann on behalf of the Commonwealth asked that additional documentation be admitted into evidence as Commonwealth Exhibit #8 in response to Dr. Kamguia's evidence as rebuttal. Objections were noted by Dr. Kamguia. The Chair overruled the objections and admitted the exhibit into evidence.

Dr. Kamguia asked his video be admitted into evidence. Objections were noted by Mr. Schliessmann on behalf of the Commonwealth. The Chair overruled the objections and the video was marked as Respondent Exhibit C and admitted into evidence.

At the conclusion of the case presentation and testimony, the Board received closing remarks from Ms. Schliessmann and Dr. Kamguia. At the conclusion of closing remarks, the Chair asked for a motion to go into closed session. Dr. Kamguia asked to be excused from the proceeding, and the Chair acknowledged his request. Dr. Kamguia left the hearing at approximately 8:10 p.m.

CLOSED SESSION:

Upon a motion by Dr. Piness, and duly seconded by Dr. Hoffman, the Board voted to convene a closed meeting pursuant to §2.2-3711.A(27) of the Code of Virginia, for the purpose of deliberation to reach a decision in the matter of Dr. Kamguia. Additionally, she moved that Ms. Marschean, Dr. Harp, and Ms. Dixon attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

RECONVENE:

Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board re-convened in open session and announced its decision.

DECISION:

Upon a motion by Dr. Hoffman, and duly seconded by Dr. Piness, the Board made certain Findings of Fact and

Conclusions of Law and voted to place the license of Dr. Kamguia on indefinite probation subject to certain terms and conditions.


VOTE:

The vote was unanimous.

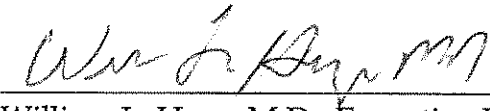
ADJOURNMENT:

The Board adjourned at 10:13 p.m.

The decision shall be effective upon the entry by the Board of a written Order stating the findings, conclusions, and decisions of this formal hearing panel.



Stephen Heretick, J.D., Chair



William L. Harp, M.D., Executive Director

20 October 2011
Date

10/21/11
Date